

PATENT
Attorney Docket 28179-07

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Yoel Wazana, Joda Paulus
Serial No. : 10/659,881
Filed : September 11, 2003
Title : Apparatus and Method For Disassembling Containers Having Thermoplastic Joining Surfaces
Group/Division : 1725
Examiner : Elve, Maria Alexandra
Our Reference : 28179-07 (Former Reference 21101-0006) (Former Former Reference 7413-1006)

REQUEST TO WITHDRAW "FINAL" STATUS OF THE OFFICE ACTION DATED AUGUST 1, 2007
AND
REPLY TO OFFICE ACTION DATED AUGUST 1, 2007

Mail Stop Amendment
Commissioner for Patents
PO BOX 1450
Alexandria, VA 22313-1450

Dear Commissioner:

This communication is a request to withdraw the "Final Rejection" status of and to reply to the Office Action dated August 1, 2007. Applicants respectfully request reconsideration.

**I. REQUEST TO WITHDRAW “FINAL” STATUS OF THE OFFICE ACTION
DATED AUGUST 1, 2007**

On July 24, 2007 a “Notice of Non-Compliant Amendment” (“Notice”) was mailed, with the reason given being that the declarations submitted in response to a non-final Office Action dated April 18, 2007, were not Identified as either a “1.131 or 1.132” type. A 30-day period was provided for response. Application responded several days later, on July 30, 2007, well within the 30-day period, and identified in both the reply to the April 18th Office Action and in the July 30th response, both declarations as having been submitted under 37 CFR § 1.132.

A. No “Correction” Was Needed; The Reply to the April 18th Office Action Expressly Identified the Type of Declarations Submitted As 37 C.F.R. § 1.132 Declarations

Applicant denies the allegation made in the July 24, 2007 Notice that “applicant has not ID’ed the type of declaration, ie 1.131 or 1.132”. Both of the declarations were expressly identified as made under 37 C.F.R. § 1.132. As specifically stated in the Reply to Office Action Dated April 18, 2007 (“Reply”), Applicant stated:

In responding to the rejections made under 35 U.S.C. § 103, and to show the non-obviousness of these and the newly presented claims, Applicants rely not only on the arguments presented, but also on the statements made in the Declaration of Joy James, MBA, (“James Decl.”), and the Declaration of Sagie Shanun, (“Shanun Decl.”) submitted concurrently herewith under 37 C.F.R. § 1.132.

See, Reply at 12, in the Remarks section. Applicant requests that the status of the August 1, 2007, Office Action be changed from “FINAL” to “non-final” for this reason alone.

B. A “Correction” Was Timely Filed in Response to the Alleged Failure to ID the Type of Declarations Submitted

The July 24th Notice allegedly for the reason that the two declarations submitted in response to the April 18th non-final Office Action were not Identified as either a “1.131 or 1.132”

type. A 30-day period was provided for response. Application responded several days later, on July 30, 2007, well within the 30-day period, and identified in both the Reply to the April 18th Office Action and in the July 30th response, both declarations as having been submitted under 37 CFR § 1.132.

However, without waiting for the 30-day period, and apparently not reading Applicant's Reply at least insofar as it expressly identified the type of declarations submitted, on August 1, 2007, an Office Action on the merits was nevertheless mailed, gave no consideration to the 37 CFR § 1.132 declarations. This Office Action was designated as "FINAL", thus severely restricting and prejudicing Applicant's rights.

For the independent reason that a full and complete "correction" was timely filed, Applicant requests that the status of the August 1, 2007 Office Action be changed from "FINAL" to "non-final".

C. The July 24th Notice Was an Improper Attempt to Prejudice Applicant's Rights and Should be Withdrawn and the Status of the August 1, 2007 Office Action Should be Changed from "FINAL" to "non-final"

Although the July 24th Notice allegedly was grounded on failure to comply with 37 CFR 1.121 or 1.4, neither of these rules of practice require that declarations be specifically identified. Furthermore, neither of the two rules of practice directed to the substance of these declarations requires that the declarations be specifically identified. Additionally, the MPEP does not make any such requirement. Finally, even assuming, *arguendo*, that some justifiable reason existed for the Notice, Applicant specifically identified both the declarations as having been submitted under 37 CFR § 1.132.

Thus, the improper and unfounded Notice that falsely found fault with Applicant's Reply, combined with the premature Office Action on the merits that improperly failed to consider the substance of the properly submitted and identified declarations is a serious denial of Applicant's rights to due process in having its application for patent examined on the merits.

For all of the above reasons Applicant requests that the August 1, 2007 Office Action status be changed from “FINAL” to “non-final”.